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5 IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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PATRICIA DESANTIS, et al.,

Plaintiffs,

No. C 07-03386 JSW

v.

CITY OF SANTA ROSA, et al.,

Defendants.

**ORDER REGARDING
DEFENDANTS' MOTION IN
LIMINE NO. 2**

At the pretrial conference, the Court granted Defendants' motion *in limine* No. 2 to exclude evidence of prior or subsequent "use of force" acts by the City and/or individual officer defendants. In support of and in response to this motion, both Defendants and Plaintiffs focused on a particular incident by Defendant Richard Celli in the *Thurston v. Santa Rose Police Dept.*, Case No. 08-1115 CRB ("Thurston case"). The Court found that the facts of *Thurston* were too dissimilar from this matter to be relevant to the *Monell* claim here. The Court further noted that the trial court in *Thurston* granted summary judgment for the defendants on the grounds that the plaintiff had not demonstrated the existence of a genuine issue of material fact regarding the use of excessive force. On this basis, the Court granted Defendants' motion *in limine*. The Court is willing to reconsider its ruling to exclude all evidence of prior "use of force" acts, if Plaintiffs submit a offer of proof to demonstrate the existence of specific prior incidents in which officers used excessive force and were not disciplined.

The Court notes that Plaintiffs contend that the prior chief of police had a policy of disciplining use of force only if the officers' use of force was criminal beyond a reasonable

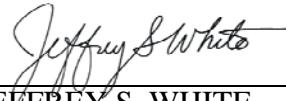
United States District Court

For the Northern District of California

1 doubt. However, even if that was the prior police chief's policy, such a policy must have been
2 the *moving force* behind Plaintiffs' alleged constitutional violation here. *See Blair v. City of*
3 *Pomona*, 223 F.3d 1074, 1079 (9th Cir. 2000); *see also Oviatt v. Pearce*, 954 F.2d 1470, 1474
4 (9th Cir. 1992). Therefore, Plaintiffs must show that there were actual incidents in which
5 officers used excessive force and were not disciplined, according to this stated policy.
6 Otherwise, if no officers ever used excessive force, then this alleged incorrect policy would not
7 have caused any constitutional violation here. Accordingly, the Court HEREBY ORDERS
8 Plaintiffs to file an offer of proof by no later than 7:00 a.m. on September 11, 2012. In this
9 offer of proof, Plaintiffs shall describe the facts of any alleged prior incidents in which officers
10 used excessive force and what evidence Plaintiffs seek to admit to prove these alleged incidents
11 of excessive force. The Court further notes that Plaintiffs must show that any alleged prior
12 incidents of excessive force are similar to the facts alleged in this matter.

13 **IT IS SO ORDERED.**

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15 Dated: September 10, 2012
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JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE